IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 2593 of 2004

in

SPECIAL CIVIL APPLICATIONNo 10763 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDUL MUSABHAI SETA

Versus

CHIEF OFFICER

Appearance:

1. LETTERS PATENT APPEAL No. 2593 of 2004

MR KISHOR M PAUL for Appellant No.

..... for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 24/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant - petitioner was serving as an Octroi clerk for the respondent - Keshod Nagar Palika. For remaining absent from duty without leave being sanctioned, he was time and again, orally as well as in writing, informed not to remain absent from duty without permission as it was not in the interest of the institution. Inspite of it, he has continued to remain absent without prior permission. Therefore, by an impugned order dated 09.05.2000, he was placed under suspension with effect from 10.05.2000 (Annexure `A' to the main petition). He has challenged his impugned order of suspension before the Court of Civil Judge (J.D.), Keshod in Regular Civil Suit no. 211 of 2000. However, no interim order was passed in his favour by the learned civil Judge. From the averments made in the petition, it appears that the appellant - petitioner and the respondents filed complaints against each other for tampering with the record. After a period of 22 months of suspension, he was served with show cause notice dated 15.03.2002 for the charges of remaining absent from duty from 10.04.2000 to 08.05.2000 (Annexure `D' to the main petition). Reply dated 03.04.2002 (Annexure `E' to the main petition) was filed by the appellant - petitioner. Without considering his reply, he was dismissed from service by an order dated 29.04.2002 (Annexure `F' to the main petition). The same was challenged by the appellant - petitioner by way of special civil application no. 10763 of 2002 before the learned single Judge of this Court. It was allowed by A.L.Dave, J on 11.02.2004 and the impugned order at Annexure `F' passed by the respondent Nagar Palika dismissing the appellant petitioner from service was quashed and set aside on the ground that without holding any regular departmental inquiry, his services were put to an end by the Nagar Palika which was in clear violation of principles of natural justice. However, while quashing and setting aside the impugned order of dismissal Annexure `F' passed by the respondent - Nagar Palika, the learned single Judge observed that it would be open for the respondents to hold inquiry on the basis of the chargesheet served on the petitioner which was already replied by the petitioner.

#. Learned counsel Shri Paul for the appellant

petitioner submitted that he cannot have any grievance against the order passed by the learned single Judge permitting the respondents to hold inquiry on the basis of the chargesheet served on him but while quashing and setting aside the impugned order of dismissal at Annexure `F' passed by the respondent Nagar Palika, the learned single Judge has not ordered the reinstatement of the petitioner in services which, according to him, should have been passed. Mr.Paul further submitted that the learned single Judge has not even awarded back wages or suspension allowance of the suspension period from 09.05.2000 till the order of dismissal dated 29.04.2002 passed by the respondent Nagar Palika Therefore, the appellant has filed this appeal.

#. It is clear from para six of the order passed by the learned single Judge that His Lordship had made it more clear that his order may not be treated as an order of reinstatement of the petitioner in service. When the dismissal order was set aside by the learned single Judge on the technical ground of violation of principles of natural justice, then it was always open to him to pass appropriate order. While quashing and setting aside the impugned order of dismissal, the learned Judge may not award back wages and precisely that has been exactly done by the learned single Judge in his discretionary jurisdiction while allowing the petition by not awarding any back wages. It was also open to the learned single Judge to order the respondents to hold inquiry on the basis of the chargesheet served on the petitioner which was already replied by the petitioner and that has been exactly done by the learned single Judge. In case of Managing Director, ECIL Hyderabad V/s B.Karunakar reported in AIR 1994 SC 1074, the Hon'ble Supreme Court has observed that " The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more. Where such fresh inquiry is held."

#. In view of the aforesaid judgment of the Constitutional Bench of the Hon'ble Supreme Court in B.Karunakar's case (supra), no fault can be found with the judgment and order passed by the learned single Judge in this appeal and accordingly this appeal fails and is hereby dismissed.

(B.J.SHETHNA, J)

(SHARAD D DAVE, J)

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